Local 724, International Association of Machinists and Aerospace Workers *and* ATSL, Inc. and Teamsters Union Local 929, International Brotherhood of Teamsters. Case 4–CD–885

May 31, 1995

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

The charge in this 10(k) proceeding was filed on March 8, 1994, by the Employer, ATSL, Inc., alleging that the Respondent, Local 724, International Association of Machinists and Aerospace Workers (Machinists), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Teamsters Union Local 929, International Brotherhood of Teamsters (Teamsters or Local 929). The hearing was held September 16, 1994,[1] before Hearing Officer Margaret M. McGovern. Thereafter the Employer and the Respondent filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.[2] On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, ATSL, Inc., is a Pennsylvania corporation engaged in trucking, warehousing, and distributing goods from a facility located at Envoy Avenue in Philadelphia, Pennsylvania. During the year preceding the hearing, the Employer sold and shipped goods valued in excess of $50,000 directly to points located outside the Commonwealth of Pennsylvania. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that Machinists and Teamsters are labor organizations within the meaning of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has offices and operates a facility at Envoy Avenue. In late 1993, the Employer successfully bid on a 5-year contract to provide services at a warehouse owned by the Pennsylvania Liquor Control Board (PLCB) and located at Enterprise Avenue, across the street from its Envoy Avenue facility. ATSL took over the PLCB facility effective February 25.

The Employer's predecessor at the PLCB warehouse had a collective-bargaining agreement with Machinists covering the warehouse maintenance employees who performed the work of maintaining and repairing the facility's Rapistan conveyor belt. This conveyor belt extends throughout the warehouse and delivers stock directly to the various loading areas where it is loaded onto trucks for delivery. There were two employees in the Machinists' bargaining unit, a father and a son named Reilly. The Reillys were laid off by the predecessor contractor and ATSL declined to hire them.

Machinists contacted the Employer prior to its takeover of the PLCB warehouse operation and requested recognition on behalf of its maintenance employees. Machinists was advised by the Employer that the conveyor belt maintenance work would be performed by ''our 929 mechanics,'' a reference to mechanics already in its employ who were members of Teamsters. Shortly after the Employer took over the PLCB facility, two Teamsters locals, including Teamsters Local 929, began picketing for undisclosed reasons. Machinists joined the picketing and continued to picket after the Teamsters locals resolved their dispute. Machinists' objectives in picketing were to obtain recognition as bargaining agent for the mechanics and to pressure the Employer to hire the Reillys. There has been no picketing since about March 25.

During the first weeks of ATSL's operations, including the period of the picketing, the Rapistan company serviced the conveyor belt but thereafter, and continuing to the present, the conveyor belt maintenance work has been assigned by the Employer to ATSL mechanic Robert Shutte. Shutte had been in ATSL's employ for approximately a year prior to the events at issue. He worked out of the Employer's maintenance mechanics' shop located in the Strawbridge and Clothier Warehouse, adjacent to the Employer's Envoy Avenue facility, from which the Employer's mechanics are dispatched. As noted previously, Shutte and the Employer's other mechanics working out of that shop were represented by Teamsters, which has a separate collective-bargaining agreement with the Employer covering that mechanics' unit. After Shutte began performing the work in dispute at the PLCB facility, he has continued to be represented by Teamsters in that unit, although he generally reports to and punches in at the PLCB facility. From time to time, he is dispatched to work on other projects at other locations, but the clear majority of his time is spent at the PLCB warehouse.

[1] All dates are in 1994 unless otherwise noted.

[2] The Employer appealed a hearing officer's ruling which it characterizes as not allowing the introduction of evidence concerning relative skills and quality of performance of the disputed work. In fact, the hearing officer sustained an objection to testimony concerning skills and quality of work based on a hearsay objection. We see no reason to disturb her ruling.

B. *Work in Dispute*

The disputed work as set forth in the notice of hearing is the maintenance and repair of the Rapistan conveyor belt system for ATSL at the PLCB warehouse. Machinists would expand the description of the disputed work to include a small amount of general maintenance work at the warehouse. The Employer would not stipulate to the inclusion of the additional work, and Teamsters took no position. The record is undisputed that the work primarily entails maintenance and repair of the conveyor belt system but that occasionally the conveyor belt mechanic performs general maintenance work. Thus we find that the work in dispute involves the maintenance and repair of the conveyor belt system and a small amount of general maintenance work performed on an ''as needed'' basis.

C. *Contentions of the Parties*

Machinists contends that no cognizable jurisdictional dispute under Section 8(b)(4)(D) exists in this case and, therefore, the notice of hearing should be quashed. It characterizes the dispute as a work preservation action. In this regard, Machinists asserts it was simply acting to protest its loss of bargaining unit work and thus asserts that its picketing was for a lawful objective. Machinists additionally contends that there are no competing claims for the work at issue in light of Teamsters' disclaimer of the work both before and during the hearing. Alternatively, in the event the notice of hearing is not quashed, Machinists argues that on the merits the work should be awarded to employees represented by it.

Teamsters, at the outset of the hearing, disclaimed any interest on behalf of employees represented by it in performing the disputed work. It did not further participate in the hearing.

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated because Machinists demanded the disputed work and then picketed the PLCB warehouse with the unlawful object of forcing the Employer to assign the work in dispute to employees represented by Machinists. Thus the Employer disputes Machinists' characterization of the dispute as one involving work preservation. In addition, the Employer argues that Teamsters' asserted disclaimer of interest in the work in dispute is ineffective because an employee represented by Teamsters continues to perform the work and Teamsters has taken no action to protest or object to that assignment. Finally, the Employer contends that the work should be awarded to employees represented by Teamsters based on the following factors: certification and collective-bargaining agreements, employer preference and past practice, economy and efficiency of operations, and relative skills.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for voluntary adjustment of the dispute.

Contrary to Machinists, we find that there are competing claims for the work and that a jurisdictional issue exists. As indicated above, prior to the Employer's takeover of the PLCB warehouse, Machinists contacted the Employer and requested recognition on behalf of its maintenance employees. When the Employer's labor relations director refused to recognize Machinists, its business agent responded that ''We may have to do what we may have to do.'' After the takeover, Machinists picketed the facility. According to the uncontroverted testimony of the Employer's labor relations director, when he asked another Machinists' business agent what it would take to have the picket line removed, that business agent replied essentially that ''you're going to have to put my guys back to work. Or to work.''

Based on these statements and actions by Machinists' business agents, we conclude that an object of the statements and picketing was to force the Employer to assign the disputed work to employees represented by Machinists. We further reject Machinists' contention that its actions had a lawful work preservation objective because it was simply protesting the loss of bargaining unit work. In this regard, it is clear that Machinists had no collective-bargaining relationship with the Employer at any time material to the events at issue. Further, the Employer never assigned maintenance and repair work at the PLCB warehouse or elsewhere to Machinists-represented employees. Accordingly, since employees represented by Machinists never performed any of the work in dispute for the Employer, we reject Machinists' characterization of its actions as involving a work preservation objective. *Electrical Workers IBEW Local 40 (F & B/Ceco of California)*, 199 NLRB 903, 904 (1972), and *Longshoremen ILA (Lawrence Erie Co.)*, 158 NLRB 1687 (1966). See also *Painters Local 1447 (Hargrove)*, 306 NLRB 97 fn. 3 (1992).[3]

We also reject Machinists' argument that no jurisdictional dispute exists because Teamsters has disclaimed the work. With regard to a competing claims issue, a disclaimer eliminating the existence of a jurisdictional dispute must be clear, unequivocal, and unqualified and disclaim all interest in the work in dispute. *Operating Engineers Local 150 (Interior Devel-*

[3] Unlike *National Maritime Union*, 227 NLRB 1081 (1977), and *Chicago Web Printing Pressmen's Union 7*, 209 NLRB 320 (1974), cited by Machinists in support of its work preservation defense, this case involves competing claims for work at the same location.

opment), 308 NLRB 1005, 1006 (1992), citing *Operating Engineers Local 150 (Austin Co.)*, 296 NLRB 938, 939 (1989). Here, it is uncontradicted that Shutte, the Teamsters-represented mechanic, performed the work in dispute at times during and after the picketing. Further, there is no indication that Teamsters' business agents ever directed Shuttle to cease performing the work, or in any manner disciplined him for refusing to cease doing the work. To the contrary, Shutte testified without controversion that in his one conversation with a Teamsters' business agent concerning his performance of the work in dispute, he was informed that ''[Teamsters] has no problem with you working over there.'' Thus, in light of the above, and consistent with the cited precedent, we find that there was no effective disclaimer by Teamsters of the work in dispute.[4]

Accordingly, we find there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the act. Therefore, we deny Machinists' motion to quash the hearing and find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

As noted above, Machinists has never been certified as a collective-bargaining representative of any employees of the Employer. Further, there has never been any collective-bargaining agreement between the Employer and Machinists which arguably covers the work in dispute. Teamsters is the certified representative of a unit of mechanics employed by the Employer working out of its mechanics' shop from which the Employer's mechanics are dispatched. Although not in evidence, it is undisputed that there is currently an existing collective-bargaining agreement between the Employer and Teamsters covering mechanics' work performed by these employees such as the work in dispute. Accordingly, we find that this factor favors an award of the work to an employee or employees represented by Local 929.

2. Employer preference and past practice

The Employer prefers to assign the disputed work to an employee represented by Teamsters rather than to employees represented by Machinists. Although the Employer had never performed mechanics' work at the PLCB warehouse location prior to the events at issue, it has historically employed Teamsters-represented employees to perform its mechanics' and maintenance work. Thus, these factors favor an award of the disputed work to a Teamsters-represented employee.

3. Relative skills

The Employer presented testimony that its Teamsters-represented employee is more highly qualified and skilled than Machinists-represented mechanics. Machinists, however, asserts that the mechanics it represents have performed work similar to that in dispute for many years and are ''capable and well-equipped'' to do so. We find the evidence is inconclusive and that the factor of relative skills does not favor an award to either group of employees.

4. Economy and efficiency of operations

The Employer presented testimony that the assignment of the disputed work to a single mechanic currently in its employ is more economical and efficient than having to hire two additional mechanics to perform the work in dispute. Machinists presented no testimony to the contrary. We find that the factors of economy and efficiency of operations favor an award of the disputed work to an employee represented by Teamsters.

Conclusions

After considering all the relevant factors, we conclude that the Employer's employee, represented by Teamsters Union Local 929, International Brotherhood of Teamsters, is entitled to perform the disputed work. We reach this conclusion relying on the factors of certifications and collective-bargaining agreements; employer preference and past practice; and economy and efficiency of operations.

In making this determination, we are awarding the work in dispute to the Employer's employee who is represented by Teamsters, but not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

[4] Machinists' reliance on *Longshoremen ILA Local 1235 (Naporano Iron)*, 306 NLRB 698 (1992), and *Teamsters Local 85 (U.C. Moving)*, 236 NLRB 157 (1978), is misplaced. In those cases, unlike here, the disclaiming unions did not willingly engage in equivocal conduct or conduct inconsistent with their asserted disclaimers.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of ATSL, Inc. represented by Teamsters Union Local 929, International Brotherhood of Teamsters are entitled to perform the work involved in the maintenance and repair of the Rapistan conveyor belt system for ATSL, Inc. at its PLCB warehouse facility, including a small amount of general maintenance work performed on an ''as needed'' basis.

2. Local 724, International Association of Machinists and Aerospace Workers is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force ATSL, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local 724, International Association of Machinists and Aerospace Workers shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.